

This letter discusses the application of sales tax in lease situations. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

August 21, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 13, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I work with COMPANY a multinational publisher. I am the associate managing editor of a monthly newsletter titled TITLE. Most of our readers are at large and medium-sized corporations.

We are working on an article about the sales and use taxation of leases and rental transactions. We would like to include for our readers a list of how states treat such transactions. Specifically, we are looking to learn each state's rules on the following issue:

Must sales and use tax be paid up front when a lease is signed or the rental transaction entered into, or should tax be assigned to each lease or rental payment? Do lessors and lessees have an option?

So that our readers receive accurate and reliable information, I would appreciate your help in answering this question for your state.

Please fax this back to me within the next couple of weeks, if possible. If it is easier, you may call me. I appreciate any assistance you can provide.

For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors are subjected to a Use Tax on their cost price or acquisition value of tangible personal property that they use by leasing in Illinois. This means lessors encounter a front-end tax on value rather than an amortized tax on receipts. The only exception is automobiles rented for one year or less.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220(a). As end users of tangible personal property located in Illinois, lessors incur Use Tax liability on their cost price of such property.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. Such would be the case when the agreements contain nominal purchase options at the end of the lease term. Such transactions are considered conditional sales from the outset, and all the receipts from the transaction would be subject to tax. In these situations, Retailers' Occupation Tax is due on all the payments received by the "lessors," and for motor vehicles the tax on all payments is due at the start of the lease term when the motor vehicle must be titled in Illinois.

Lessors or rentors of motor vehicles are considered to be retailers when they sell automobiles coming off lease. Section 1c of the Retailers' Occupation Tax Act, 35 ILCS 120/1c, provides in part that "[a] person who is engaged in the business of leasing or renting motor vehicles to others and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail." Therefore, when lessors sell an automobile to lessees, the lessors will incur Retailers' Occupation Tax liability on the gross receipts from such sales.

Automobiles leased under terms of one year or less in Illinois are not subject to Use Tax but rather are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 et seq. This tax is imposed at the rate of 5% of the gross receipts from such business, and local automobile rental taxes may also apply.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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